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ABSTRACT

The Supreme Court broadened freedom of expression for high school and college students in its landmark decision of 1969, "Tinker vs Des Moines Independent School District." "Tinker" is significant in that it affirmed the Court's protection of free speech unless such expression is likely to produce "clear and present danger" of serious harm, and the "material and substantial interference" standard established in "Tinker" helped clarify which student expressions are protected under the First Amendment. "Papish vs University of Missouri Curators" is the most recent Supreme Court case (1973) to cite "Tinker," but lesser courts have adopted the "Tinker" rationale in such cases as "Zucker vs Panitz," "Scoville vs Board of Education," and "Lee vs Board of Regents of State Colleges." Total clarity concerning the principles established in "Tinker" has not been reached, but it is hoped that these standards will be affirmed in future Court decisions and clarified in the process. (Author/RB)

THE BLACK ARMBANDS CASE:
A DELICATE BALANCE

by

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The Supreme Court decided its first case involving freedom of speech for high school students in 1969, in Tinker v. Des Moines Independent Community School District.[1] This case was to become a landmark case for many cases to follow in its wake, in which the courts had to balance the First Amendment freedoms of students against the authority of school officials.

The Tinker case is popularly known as "the Black Armbands Case" because it involves the suspension of three teen-age students from school because they wore black armbands protesting the Vietnam War and declaring the imperative need for a truce. The youths wore the armbands in defiance of a school regulation drawn up two days before the students' action. The regulation expressly forbade wearing armbands. The parents of the three students sought a federal injunction to prevent school officials from disciplining them, but lower federal courts upheld the school administrators' decision on the basis that the officials had acted "reasonably" to prevent a disturbance which might have resulted from the wearing of the armbands.

Robert Trager has aptly pointed out that one of the most remarkable aspects of the Tinker case is that the Supreme Court decided to review it at all.[2] The courts have traditionally shied away from considering cases which involve conflict with school officials, believing that a school board could best settle its affairs without the courts' "second guessing" its decisions or hampering the autonomy of local school officials.[3] Even in cases when the courts intervened, the record reads: "Judidicial interposition in the operation of the public school system of the Nation raises problems requiring care and constraint."[4]

The Tinker court came out strongly for the First Amendment rights of students in its reversal of the lower courts' decision. Justice Fortas struck the chord of First Amendment freedoms when he declared, "Our problem involves direct, primary First Amendment rights closely akin to 'pure speech.' "[5]

The Tinker court relied on previous cases wherein the Supreme Court had intervened to protect First Amendment rights of parents, teachers and students. The first case which was cited in Justice Fortas' majority opinion is Meyer v. Nebraska.[6] Actually, Meyer seems more concerned with the rights of teachers and parents than it is with those of students. Indeed, Meyer finds unconstitutional an "arbitrary and unreasonable interference with the right of a teacher to carry on his occupation and of parents to hire him, a state law forbidding the teaching of modern language to young children in schools."[7] (Emphasis mine.)

The Supreme Court had also invoked the First Amendment in 1943 to invalidate compulsory symbolic speech and a declaration of (unfelt) belief, in West Virginia State Board of Education v. Barnette.[8] In Barnette the Court had ruled invalid a school regulation making flag saluting compulsory as a prerequisite for public school attendance. The Supreme Court set a precedent here for later decisions, establishing as it did the First Amendment applicability to local school boards as agencies of state government.[9]

In the year preceding Tinker, The Supreme Court had upheld and clarified the right of a teacher to publicly criticize a school board's policy in Pickering v. Board of Education.[10] The Tinker court extended the Pickering decision to include students as well as teachers. Pickering noted that teachers should not be compelled to relinquish the First Amend-

ment rights they enjoy as citizens to comment on matters of public interest in connection with the public schools where they work. The Tinker court would make an analagous point in its support of student rights:

> First Amendment rights, applied in the light of the special characteristics of the school environment, are available to teachers and students. It can harly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.[11]

Although the Court acknowledges the "special characteristics" of the school atmosphere, it insists that all who enter there keep the ordinary rights of citizens. The majority opinion distinguishes between the Cox v. Louisiana[12] and Adderley v. Florida[13] decisions and its own decision in Tinker. For although Cox and Adderley pertain to First Amendment freedoms within specialized places (the courthouse and the jail), Tinker cites Hammond v. South Carolina State College,[14] in which Judge Hemphill pointed out that a school is not like a hospital or a jail enclosure.

Though the cases mentioned above lent support to the Tinker reversal of charges against the armband wearers, the Court faced a long history of decisions espousing the theory enunciated by Allen A. Ryan, Jr.: "The state's interest in maintining the orderly operation of its schools outweigh the student's interest in free speech."[15]

In upholding the school officials' authority, the simplest method used by the courts was simply not to review cases involving high schoolers' freedom of speech, arguing instead that the expression in question did not fall within First Amendment protection.[16] But it was the "reasonableness" standard which has been the strongest judicial bulwark of school

officials' authority. Proposed in 1933 and later clarified in Burnside v. Byars,[17] the courts declared that school officials may decide rules on the basis of "reasonableness" (a blanket term), and not on the basis of "wisdom" or "expediency." Justice Fortas reiterated Burnside's ban on expediency as a basis for school officials' rule-making.

The biggest problem with the "reasonableness" criterion is that the term has never been defined clearly. Perhaps no pat definition of "reasonableness" can plug all the holes in the complex issues facing school administrators today. However, it cannot be denied that the term's vagueness has tended to give wide latitude to the judgment of school officials, serving like some broad umbrella which shields their decisions from the torrents of a harsh judicial review.

Then too, the "reasonableness" standard has not been thoroughly considered in cases like Ferrell v. Dallas Independent School District,[18] in which the federal district court recognized long hair as a form of free expression, but dismissed the student's claim because the school board had acted "reasonably under the circumstances." Just how the school board had so acted was never adequately explained, according to Allen Ryan;[19] rather, the invocation of the term "reasonable" was enough to sanction the board's action. Even still, Ferrell stands like a beacon of liberty in contrast with earlier decisions in which the courts did not bother with niceties like the "reasonableness" standard in dealing with high school students.[20]

Two high school cases decided the same day by the same court in 1966 form the basis for the Tinker court's famous "material and substantial interference" criterion, which has become the standard in deciding whether or not students' expressions may be protected under the First Amendment. The two cases, referred to in Tinker's first footnote, center around a

similar incident: the suspension of students for wearing "freedom buttons." One case, Burnside v. Byars, was decided in the students' favor; the other, Blackwell v. Issaquena County Board of Education, was not. The Tinker court held it to be "instructive... that the same panel on the same day reached the opposite result on different facts. It declined to enjoin enforcement of such a regulation in (a) high school where the students wearing freedom buttons harrassed students who did not wear them and created much disturbance," (in Blackwell v. Issaquena);[21] whereas in Burnside v. Byars, the buttons evoked only "mild curiosity."[22]

Taken together, Ryan feels that Blackwell and Burnside "illustrate an attempt to accommodate the need for an orderly educational environment without completely obliterating students' rights to freedom of speech."[23] Certainly the Tinker court made the Blackwell - Burnside distinction the foundation for its insistence that a student may express his or her opinion, "even on controversial subjects like the conflict in Vietnam, if he (or she) does so (without) materially and substantially interfering with... appropriate discipline in the operation of the school" and without interfering with the rights of others.[24]

Another judicial current which informed the Tinker court, at least insofar as it guided Justice Stewart's concurring opinion, is the tradition that "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults."[25] Ginsberg v. New York provides a modern example of the principle just quoted in Prince v. Massachusetts. The Ginsberg court affirmed a New York criminal obscenity statute which prohibits the sale to minors under seventeen years whether or not its sale would be obscene for adults. In justifying its position

the Ginsberg court said:

> The well-being of its children is of course a subject within the state's constitutional power to regulate, and, in our view, two interests justify the limitations... upon the availability of sex material to minors under 17... First of all, constitutional interpretation has consistently recognized that parents' claims to authority in their own households to direct the rearing of their children is basic in the structure of our society... The legislature could properly conclude that parents and others, teachers, for example, who have this primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility.[26]

Although Justice Black did not refer to Ginsberg as Justice Stewart did, both they and Justice Harlan come out strongly for the logic the Ginsberg court espoused. All three Justices (and probably Justice White as well) would opt for a strong protective stance towards children's welfare, arguing that minors need the guidance and authority of adults in regulating their First Amendment freedoms of speech so that they may be "safeguarded from abuses" which might prevent their "growth into free and independent well-developed men and citizens."[27] In pursuing this line of thought, Justices Black, Harlan, Stewart and White could draw upon no less an authority than Thomas Emerson, who said:

> The world of children is not strictly [illegible] of the adult realm of free expression. The factor of immaturity, and perhaps other considerations, impose different rules. Without attempting here to formulate the principles relevant to freedom of expression for children, it suffices to say that regulations of communication addressed to them need not conform to the requirements of the first amendment in the same way as those applicable to adults.[28]

Dissenting Justices Harlan and Black could also draw upon the rich legacy of court decisions which reinforce the judicial conviction that school authorities have the power to stringently regulate their students.[29] Paul G. Haskell has joined his voice to the two dissenting Justices, arguing that the "material and substantial interference" standard is tantamount to a " clear and present danger" test. Haskell regards such a test "inappropriate for the public schools ... (T)he maintenance of an effective and orderly educational institution for teen-age children may not allow for such latitude in expression" as given in Tinker.[30] Haskell also takes issue with the Tinker court's imposition of guidelines for school officials, arguing that judges who are untrained in the problems of operating public schools would not make prudent choices in public school operations, while school officials, who are knowledgable and trained in the day-to-day problems of handling students, should continue to be backed up, as the courts had done, by and large, in its tradition previous to Burnside and Tinker.

Haskell also supports Justice Black's dissenting opinion that expressions which may be condoned in the community at large (vulgarity, criticism of administrators or of proposals) may not enjoy the same protection inside the schoolhouse, due to the unique sociological make-up of the school.[31] As Justice Black sardonically remarked in his dissent, "I for one, am not fully persuaded that school pupils are wise enough, even with this court's expert help from Washington, to run the 23,390 public school systems in our 50 states."[32]

The Tinker case is significant for three reasons. First, the decision

affirms the principle established in Terminello v. Chicago,[33] in which the court, per J. Douglas, stated: "freedom of speech... is... protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive eveil that rises far above public inconvenience, annoyance, or unrest."[34]

In the same vein, the Tinker court affirmed the decision of Shelton v. Tucker, which said:

> The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. The classroom is peculiarly the 'marketplace of ideas' The Nation's future depends upon leaders trained through the wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, (rather) than through any kind of authoritative selection.[35]

The Tinker court echoed Shelton and Terminello when Justice Fortas stated:

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution... students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those statements that are officially approved.[36]

Ultimately, then, Tinker applied to high school students the privilege that Justice Oliver Wendell Holmes defended so staunchly: the right of minority or unpopular viewpoints to be heard. As Holmes said in his dissenting opinion in U.S. v. Schwimmer:

> If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought-- not free thought for those who agree with us, but freedom for the thought we hate.[37]

Indeed, the Tinker court affirmed Justice Jackson's contention that the school, as a laboratory for democracy, deserves "scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."[38]

The second significant outcome of the Tinker decision is its positing "material and substantial interference" with school discipline[39] as the norm for judging whether or not high schoolers' expressions can be raised to a constitutionally protected plane. Robert Trager elaborates this point even further: "With specific reference to schools, the key terms are reasonable rules and regulations governing activities, which materially and substantially interfere with school order.[40]

The third area of major significance arising from the Tinker decision has been noted by Terry B. Light in the William and Mary Law Review. Light said:

> The ultimate effect of Tinker is to clearly adopt the Burnside rationale, placing the burden of justification squarely upon the regulating authority. That is, the State, in the person of the school officials, must show the regulation was caused by MORE than a desire to avoid the discomfort and unpleasantness always accompanying an unpopular viewpoint... The burden is on the defendant (State) to show that some deleterious effect upon school discipline will inevitably result.[41]

Light sees a parallel between the Tinker decision and the principles outlined in Dennis v. U.S.[42] and Cantwell v. Connecticut,[43] in that speech must actually lead to acts adverse to the state interest in order to lose Constitutional protection.[44]

Since the Tinker decision, its principle of "material and substantial interference" has been cited by the Supreme Court in four cases and by lower

courts in 125 cases.[45] In three of the cases before the lower courts Tinker was cited as controlling the decision, while in seven instances, the lower courts distinguished between their case and Tinker (that is, the court showed its case to be different in law or in fact from Tinker).[46]

It can probably be attributed to the different temper of the present Supreme Court from the Warren Court, which judged the Tinker case, that in three of the four Supreme Court cases since Tinker the reference to Tinker is made in a dissenting opinion. The fourth case, Papish v. University of Missouri Curators,[47] followed the Tinker rationale. It involved a 32-year-old graduate student in journalism, Barbara Susan Papish, who was dismissed from the University for distributing on campus a paper called Free Press Underground. The paper was distributed in February, 1969 and contained two articles which the university objected to as being indecent. The first item was a front-page cartoon showing policemen raping the Statue of Liberty and the Goddess of Justice; the other was a headline in which the four-letter word for copulation was used. The Supreme Court did not rule on whether the underground newspaper was obscene, but did say the university had no right under the circumstances (Ms. Papish's activities were not "materially and substantially interfering" with campus order or discipline) to expel a student for expressing his or her ideas in print form and then circulating them.

Lower courts' decisions invoking the Tinker decision reveal a wide range of issues and a wide range of disparity in interpreting the "Black Armbands Case."

Some of the post-Tinker cases involved the right of students to engage in protest demonstrations.[48] Other cases involved banning of speakers on campuses.[49] Still others involved hair style regulations.[50] Regulations

controlling student conduct have also been challenged, on the basis of the rules' vague and overly-broad wording. Some courts have voided school regulations on this basis.[51] Other courts have declined to recognize the principle that student regulations may be voided because of vagueness or over-breadth in the rules' definition, using many of the arguments to support their case that J. Black used in his dissenting opinion in Tinker.[52]

But it is in the area of school publications that the issue of freedom of speech and press becomes most clearly discernible as First Amendment freedoms directly related to the future of student journalism in America.

One important censorship case to follow Tinker involved two high school journalists suspended by Houston, Texas school authorities for distributing an underground newspaper, Pflashlyte, which sarcastically reported a hypothetical school administrator in Sharpstown High School as saying: "For mah fine capacity to suppress ideas, ah have been awarded this school and yore minds." The U.S. District Court followed Tinker's lead in deciding that students have the right to produce and distribute newspapers on and off campus as long as they do not substantially disrupt school operations, and so found for the student plaintiffs. However, the court did say that if "precise and narrowly drawn regulations were established, publication and distribution of student periodicals could be barred if these activities 'materially and substantially disrupt the normal operations of the school.' "[53]

Another student publication case to cite Tinker was Zucker v. Panitz,[54] in which the right to advertise was at issue. The controversy in this case centered around a New Rochell High School student editor, Laura Zucker, who challenged the school principal's (Dr. Adolph Panitz') ban of an advertise-

ment in the school newspaper, The Huguenot Herald. The ad was prepared by the Ad Hoc Student Committee Against the War in Vietnam and read: "The United States government is pursuing a policy in Viet Nam which is both repugnant to moral and international law and dangerous to the future of humanity. We can stop it. We must stop it." District Judge Metzmer referred to Tinker several times in his verdict, which found for the student editor.

The judge cited Tinker as controlling the outcome of Zucker when he opined that the issue was the same as "the black armbands case," or the area where "students in the exercise of First Amendment rights collide with the rules of the school authorities."[55] Later in his decision, Judge Metzmer said:

> It is patently unfair in light of the free speech doctrine to close to the students the forum which they deem effective to present their ideas. The rationale of Tinker carries beyond the facts in that case.
>
> Tinker also disposes of defendants' contention that cases involving advertising in public facilities are inapposite because a school and school newspaper are not public facilities in the same sense as buses and terminals... -- that is, they invite only a portion of the public.
>
> This lawsuit arises at a time when many in the educational community oppose the tactics of the young in securing a political voice. It would be both incongruous and dangerous for this court to hold that students who wish to express their views on matters intimately related to them through traditionally accepted nondisruptive modes of communication, may be precluded from doing so by that smae adult community.[56]

The most celebrated case following Tinker and which applied Tinker's principles was Scoville v. Board of Education.[57]

In Scoville, two high school students in Joliet, Illinois were suspended for a semester for distributing on school premises about sixty copies of the underground newspaper Grass High. The paper suggested that students not accept school "propaganda," called school regulations "asinine," accused a dean of having a "sick mind" and concluded that "oral sex may prevent tooth decay."[58] The students were expelled under a rule in the school district that allowed expulsion of pupils "guilty of gross disobedience or misconduct." The students brought suit, arguing that their constitutional rights of freedom of speech had been violated.

Prior to Tinker, a U. S. District Court upheld the board's expulsion, declaring that the student editiors' action was a substantial threat to the school discipline of Central High. The court adopted the arguments of Prince v. Massachusetts and Ginsberg v. New York when the Illinois court said:

> Particularly in elementary and secondary schools, the state has a compelling interest in maintaining an atmosphere conducive to an orderly program of classroom learning, and to respect for legitimate and necessary administrative rules.[59]

It is somewhat surprising that even after the Tinker decision, a three-judge panel of a U.S. Court of Appeals still affirmed the district court's decision. The panel noted that the editorial was aiming at an "incitement of students to ignore accepted school procedures and the condemnation of the school." The panel was satisfied that Grass High constituted "disruption of or material interference with school activities," and so fell within the guidelines of Tinker.

The entire U. S. Court of Appeals for the Seventh Circuit then ruled on the case and reversed the previous decisions, arguing that the lower court and the panel of judges had no way of determining actual disruption or interference resulting from the sale of the sixty copies of Grass High. No evidence had been presented, for example, which showed the impact the

or interference resulting from the sale of the sixty copies of Grass High. No evidence had been presented, for example, which showed the impact the underground newspaper actually had in the school. Even though the paper showed "a disrespect and tasteless attitude toward authority," the sale of the sixty copies did not in itself justify its supression, the Appeals Court ruled. "That plaintiffs may have intended their criticism to substantially disrupt or materially interfere with the enforcement of school policies is of no significance per se under the Tinker test. the court said, adding that school officials have the burden of justifying school rules which infringe on freedom of expression.[60]

Scoville thus took the Tinker decision one step further, declaring that the intention to disrupt is insufficient evidence to justify suppressing students' freedom of speech and press. Rather, proof of actual imminent "substantial and material interference" with school order must be given by school officials for them to win their case. As Haskell sees the Scoville decision, the verdict is the schoolhouse counterpart of the freedom enjoyed by the community at large expressed in Brandenburg v. Ohio (395 U.S. 444-969).[61]

Lee v. Board of Regents of State Colleges[62] involved a college case similar to Zucker v. Panitz. In Lee, as in Zucker, the advertisement in question was a call to conscience over the Vietnam War. And in Lee, as in Zucker, the outcome was favorable for the student plaintiffs. The decision in Lee paid its tribute to Tinker when the Seventh Circuit court said:

> In Tinker, the Supreme Court, albeit in a somewhat different context, balanced the right of free expression against legitimate considerations of school administration. Tinker demonstrates how palpable a threat must be present to outweigh

> the right to expression. The court said, in part, 'But in our system, undifferentiated fear of apprehension of disturbance is not enough to overcome the right to freedom of expression...'
>
> The problems which defendants foresee fall short of fulfilling the Tinker standard.[63]

Although the Tinker decision may seem to blanket the High Court's blessings on student expressions which cause no "material and substantial interferance" with school order, the situation is actually much less clear-cut. Steven and Webster, in their recent book on student press law, voice the opinion of many legal experts when they say:

> (T)he courts have never clearly defined 'reasonable rules' or what constitutes 'material and substantial interference with school operations.' Neither have they clearly indicated the extent of the burden school officials have when they attempt to justify a forecast of disruption or interference.[64]

A case which points up the ambiquity involved in the terms mentioned above is Norton v. Discipline Committee of East Tennessee University.[65] Norton was denied certiorari (the right to be reviewed by a higher court) by the Supreme Court; hence, the ambiguities in the Tinker decision which caused the lower courts in Norton to side with the school officials was just what "material and substantial interference" means. Does it mean something analogous to a "clear and present danger" test? Or does it mean, as Norton held, that school officials "know in their hearts" (which the officials in Norton indicated that they knew) will cause serious disturbance to school order? The question still stands.

It is still a moot point whether the opinion of Justice Fortas, in stating the majority opinion in Tinker, will prevail or whether Justice Black's point of view will prevail.

While the Tinker decision contains some of the most ringing rhetoric in defense of the First Amendment, its opinions seem as much in danger of

erosion by a Supreme Court less vigilant of civil rights than the Court under which the case was tried as it is by the ambiguity of the standards the Tinker court established. It is hotly debated at this point in time whether the cure for the student press' First Amendment rights lies in independent financing, or whether the more traditional methods of financing the student press should continue.

If the past is any indication for the future, it is safe to predict that the principles of Tinker will be contested by school officials who maintain that they must limit students' expressions for the sake of school order and by students who challenge the right of officials to restrict their expressions. It is to be hoped that the principles of Tinker will be affirmed by future courts and clarified in the process.

NOTES:

1. 393 U.S. 503 (1969).

2. Trager, "Freedom of the Press in College and High School," 35 Albany Law Review (1971), p. 179.

3. See, e.g. Watson v. City of Cambridge, 157 Mass. 561, 32 N.E. 864 (1893); Hodgekins v. Rockport, 104 Mass. 475 (1870) for early decisions establishing this precedent.

4. Epperson v. Arkansas, 393 U.S. 97, 104 (1968).

5. Tinker, 393 U.S. 503, at 504.

6. 292 U.S. 390 (1923).

7. Tinker, op. cit.

8. 319 U.S. 624 (1943).

9. E.g. Slochower v. Board of Education, 350 U.S. 551 (1956) and Brown v. Board of Education, 347 U.S. 483 (1954).

10. 391 U.S. 563 (1968).

11. 393 U.S. 503, at 504.

12. 379 U.S. 536 (1965).

13. 385 U.S. 39 (1966).

14. 272 F. Supp. 947 (D.C.D.S.C. 1967).

15. Ryan, "Constitutional Law: Regulation Prohibiting War Protest in High School is Unconstitutional." 54 Minnesota Law Review (January 1970), p. 722.

16. E.g. Davis v. Firment, 269 F. Supp. 524 (E.D. La. 1967); Leonard v. School Community of Attleboro, 349 Mass. 704, 212 N.E. 2nd 468 (1965) as cited in Ryan, op. cit.

17. Richardson v. Braham, 125 Neb. 142, 249 N.W.557 (1933); Burnside v. Byars, 363 F 2d 744, 748 (5th Cir. 1966).

18. 363 F 2d 744, 748 (5th Cir. 1966).
19. Ryan, op. cit., p. 522.
20. E.g. Pugsley v. Sellmeyer 158 Ark. 274, 250 S.W. 538 (1923); Bishop v. Houston Independent School District, 29 S.W. 2d 312 (Texas Civ. App. 1930). "We are not concerned with the reasonableness of the rule adopted by the Board," the Bishop court said.

Notes, continued...

21. as quoted in Cases and Materials: Constitutional Rights and Liberties, ed. by William B. Lockhart, et. al. (St. Paul, Minn.: West Publishing Co., 1970), p. 402.

22. 363 F 2d 744 (1966).

23. Ryan, op. cit., p. 724.

24. Tinker, as cited in Lockhart, op. cit., p. 404.

25. Prince v. Massachusetts, 321 U.S. 158, 170 (1944).

26. Ginsberg v. New York, 390 U.S. 629 (1968) as cited in Lockhart, p. 704.

27. Prince v. Massachusetts, as cited in Lockhart, p.705.

28. Emerson, "Toward a General Theory of the First Amendment," 72 Yale Law Journal 877, 938, 939 (1963), as quoted in Lockhart, p. 704.

29. See, e.g. Crews v. Cloncs, 303 F. Supp. 1370 (S.D. Ind. 1969); Jones v. State Board of Education of Tennessee, 279 F. Supp. 190 (M.S. Tenn. 1968), aff'd 407 F 2d 834 (6th Cir. 1969); Ferrell v. Dallas Independent School District, 261 F. Supp. 545 (N. Dak. Tex. 1966), aff'd 392 F 2d 697 (5th Cir. 1968). cert. denied, 393 U.S. 856 (1968).

30. Haskell, "Student Expression in the Public Schools: Tinker Distinguished," 59 The Georgetown Law Journal (October, 1970), p. 56.

31. Haskell, Ibid. See also Judge Goldberg, in Ferrell v. Dallas Independent School District, 392 F 2d 697, at 704-5 (5th Cir.) cert. denied, 392 U.S. 856 (1968) who expressed the same view: "The American community groups together hundreds, even thousands, of energetic, volatile and sometimes aggressive young people in close contact with one another and in confined areas, during a substantial part of each school day..."

32. Statistical Abstract of the United States (1968), Table No. 578, p. 406, as cited in Tinker, 393 U.S. 503, at 526.

33. 337 U.S. 1 (1949).

34. Terminello v. Chicago, 337 U.S. 1, at 4 (1949).

35. Shelton v. Tucker, 364 U.S. 479, at 487 (1960).

36. Tinker, 393 U.S. 503, at 511 (1969).

37. U.S. v. Schwimmer, 279 U.S. 644, at 654-55 (1929).

38. Board of Education v. Barnette, 319 U.S. 624, at 637 (1943).

39. Tinker, 393 U.S. 503, at 509.

Notes, continued...

40. Trager, op. cit., p. 175.

41. Light, "Constitutional Law-- Right of Free Speech-- Tinker v. Independent Community School District, 89 S. Ct. 733 (1969)," 11 William and Mary Law Review 278 (Fall, 1969).

42. Dennis v. U.S., 341 U.S. 494 (1951).

43. Cantwell v. Connecticut, 310 U.S. 296 (1939).

44. Light, op. cit., see also Brandenburg v. Ohio, 395 U.S. 444 (1969).

45. Shepard's U.S. Citations -- Cases, Vol. 73, No. 2 (Colorado Springs, Colo.: Shepard's Citations, Inc., April, 1974).

46. Ibid.

47. 410 U.S. 670 (1973).

48. See, e.g., Esteban v. Central Mo. State College, 415 F 2d 1077 (8th Cir. 1969), cert. denied, 398 U.S. 965 (1970); Jones v. State Board of Education, 407 F 2d 834 (6th Cir. 1969), cert. denied, 397 U.S. 31 (1970).

49. See, e.g. Brooks v. Auburn University, 412 F 2d 1171 (5th Cir. 1969); Stacy v. Williams, 306 F. Supp. 963 (N.D. Miss., 1969).

50. See, e.g. Griffin v. Tatum, 425 F 2d 201 (5th Cir. 1970); Richards v. Thurston, 424 F 2d 1281 (1st Cir. 1970). Griffin and Richards together upheld the student challenges. Other courts have upheld the school authorities; see, e.g.: Ferrell v. Dallas Independent School District, 392 F 2d 697 (5th Cir.) cert. denied, 393 U.S. 856 (1968); Brownlee v. Bradley County, Tenn. Board of Education, 311 F. Supp. 1360 (E. D. Tenn. 1970); Newhaus v. Torrey, 310 F. Supp. 192 (N.D. Cal. 1970).

51. E.g. Soglin v. Kauffman, 418 F 2d 163 (7th Cir. 1969).

52. E.g. Norton v. Discipline Comm. of East Tenn. State Univ. 419 F 2d 195 (6th Cir. 1969), cert. denied, 399 U.S. 906 (1970).

53. Sullivan v. Houston Independent School District, 307 F. Supp. 1328 (1969) as cited in Stevens and Webster's Law and the Student Press, op. cit., p. 7.

54. 299 F. Supp. 102 (S.D.N.Y. 1969).

55. Zucker, as quoted in Donald M. Gillmor and Jerome A. Barron's 1971 Supplement to Mass Communications Law (St. Paul, Minn.: West Publishing Co., 1971), p. 17.

56. Ibid.

57. 286 F. Supp. 988 (1968); 415 F 2d 860 (1969); 425 F 2d 10 (1970); cert. denied, 400 U.S. 826 (1970).

Notes, continued...

58. As quoted in Stevens and Webster, Law and the Student Press, p. 7.

59. Ibid., p. 8.

60. Ibid.

61. Haskell, op. cit., p. 53.

62. 441 F. 2d 1257 (7th Cir. 1971).

63. Lee, as quoted in Gillmor and Barron, op. cit., pp. 22-23.

64. Stevens and Webster, op. cit., p. 18.

65. 419 F. 2d 195 (1969); cert. denied, 399 U.S. 906 (1970).

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